

GUIDELINES

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The Newsletter of the New Jersey Executive Commission on Ethical Standards

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THE EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Chairwoman Linda Anselmini, Vice Chair Elizabeth Randall, Commissioner Arthur Eisdorfer, Commissioner Alisha Griffin, Commissioner Lonna Hooks, Commissioner Fred Lopez, and Commissioner Alan Steinberg; Executive Director Rita L. Strmensky.

The cases presented in "Guidelines" are designed to provide State employees with examples of conflicts issues that have been addressed by the Executive Commission. Specific questions regarding a particular situation should be addressed directly to the Commission.

COMMISSION CASE NO. 1-96

SUBJECT: Fundraising Activity.

FACTS: The State agency requested the Commission's advice regarding fundraising. The question relates to a two-prong fundraising campaign: a general membership campaign and a private sector contribution/sponsorship campaign. The second activity would provide funding for special events and programs that the agency is not able to underwrite otherwise.

RULING: The Commission advised the agency that there did not appear to be a conflicts problem with the proposed general membership campaign so long as invitations to join are broadly advertised and not targeted to individuals or organizations regulated by the agency. As

to the sponsorship campaign, the targeting and soliciting of individuals and entities which are subject to the agency's authority is problematic under the Commission's precedent. The Commission also advised the agency that prior to undertaking any fundraising activity, it may be prudent to seek the Attorney General's advice regarding the agency's statutory authority.

REASONING: The Commission reviewed the facts and circumstances of the first proposal; there was no Commission precedent dealing with this particular issue. The Commission noted that it did not appear to be a conflicts issue as long as the general membership campaign is broad based and does not target individuals or entities regulated by the agency exclusively but rather is advertised

to individuals and entities outside of the agency's jurisdiction as well.

As to the second activity, a review of precedent indicated that the Commission has not permitted agencies to solicit contributions of any kind from entities that they do business with or regulate. There is an additional problem that is not in the Commission's jurisdiction, that the language of the enabling legislation is not clear cut as to whether the agency has the authority to fundraise. The statute indicates that the agency can accept donations and bequests. It was noted that some agencies are governed by statutes that specifically authorize fundraising.

COMMISSION CASE NO. 2-96

SUBJECT: Post-Employment.

FACTS: A State agency asked advice on three questions involving the former vice president of the agency: whether it is permissible for the former employee personally to engage in lease negotiations between the agency and the private organization with which he is now employed on five particular items; whether it is permissible for the former State employee to personally engage in any aspect of any future lease negotiations between the former State agency and the private entity; and the length of the time limit for the prohibition should it apply to the former State employee.

RULING: The Commission reviewed the facts and circumstances of this situation under section 17, the post-employment provision of the statute, and determined that the former State employee is prohibited from representing the private entity in negotiations with the State agency

in connection with the five items specified. With respect to the second question, the former State employee is prohibited from representing the private entity in any aspect of any lease negotiation with which he had involvement while employed at the agency; the former State employee would be able to represent the private entity in negotiating a license agreement that is separate and distinct from the existing one. In connection with these questions, the Commission advised the State agency that there is no time limit on the prohibitions of section 17.

REASONING: The Commission determined that because the former State employee was substantially and directly involved in the negotiation of the lease while he was a State employee, he was prohibited from representing a party other than the State in connection with that lease.

With respect to the separate and distinct agreement, the former State employee is permitted to represent the private entity because he had no involvement with the agreement during his State employment.

COMMISSION CASE NO. 6-96

SUBJECT: Contracting with a State Agency.

FACTS: The part-time State employee would like to submit bid proposals to provide financial services to the State.

RULING: The Commission determined that the State employee may participate in competitive bidding after public notice for contracts to provide financial services to State agencies, excluding contracts solely for his own agency, with the understanding

that he may not engage in any activities related to his outside interests on State time, he may not use State resources for any purpose related to his outside interests, and he may not disclose or use any information or services not generally available to the public in connection with his outside interests.

REASONING: The Commission reviewed the facts of the situation under section 19, which addresses contracting with a State agency. Under section 19, State officers and employees are prohibited from entering into a contract with the State for a value of \$25 or more except under limited circumstances. One of these circumstances is contracts made after public notice and competitive bidding. Under precedent, the Commission has permitted State employees to participate in the competitive bid process, with the exception of contracts with their own agencies.

COMMISSION CASE NO. 7-96

SUBJECT: Casino Post-Employment Prohibition.

FACTS: The question concerned the interpretation of section 17.2 of the Conflicts Law and the extent to which the prohibition applies to representing a holding company or intermediary company that is in the chain of ownership of a casino license holder in connection with casino-related activities.

RULING: The Commission determined that under section 17.2(c), the casino post-employment restriction, a "person" or a law firm with which the "person" is associated may represent a holding or intermediary company with respect to a New Jersey casino license holder or

applicant in connection with casino development, permitting, licensure or any other matter related to casino activity in another jurisdiction, not New Jersey.

REASONING: The Commission reviewed the facts of the situation under section 17.2(c) which prohibits a "person" or any member of his immediate family, or any partnership, firm or corporation with which such person is associated or in which he has an interest from holding directly or indirectly an interest in or holding employment with or representing, appearing for or negotiating on behalf of any holder of or applicant for a casino license in connection with any cause, application or matter, or any holding or intermediary company with respect to a holder of or applicant for a casino license in connection with any phase of casino development, permitting, licensure or any other matter whatsoever related to casino activity.

This particular issue had never been addressed by the Commission. Previous Attorney General's Opinions on holding and intermediary companies have not reached this interpretation of the restriction because in each case the holding or intermediary company was not in the direct chain of ownership. The language of the statute does not say if the prohibition applies just to New Jersey.

The Commission determined that considering that New Jersey's interest is in keeping the New Jersey casino industry from the taint of a "person" being involved for two years, it was reasonable to interpret the statute to say that the prohibition does not apply to representing a holding or intermediary company in another jurisdiction. The individual who

requested the opinion was interested in taking a job in Nevada.

COMMISSION CASE NO. 8-96

SUBJECT: Post Employment Restriction.

FACTS: The former State employee was offered an opportunity to join an engineering company that will serve as a consultant to the developer of a project that the former State employee was involved with during his State tenure.

RULING: The Commission determined that the former State employee is prohibited, under section 17, from representing, appearing for, negotiating on behalf of or providing services or information not generally available to the public to the consulting engineering firm in connection with this particular project since he was substantially and directly involved in the project as a State employee.

REASONING: The Commission reviewed the facts of the situation under section 17, the post-employment provision of the statute. When the project was initially put forward at his State agency, the former State employee chaired a committee formed to assess the project. The former State employee was also the chief architect of a segment of the project and, therefore, under Commission precedent would be prohibited from accepting the position in question since he was substantially and directly involved in the project during his State tenure.

COMMISSION CASE NO. 16-96

SUBJECT: State Employees' Participation in Professional Organizations that Comprise, in the Majority, Vendors or Contractors Who Do Business with the Agency.

FACTS: The State agency asked for the Commission's guidance as to what restriction, if any, should be placed upon employees who participate, as officers, in professional organizations that comprise, in the majority, vendors or contractors who do business with the Department.

RULING: The Commission advised the agency that each professional association situation should be reviewed under the application of the Commission's Guidelines for Secondary Employment. The agency can also use the criteria articulated by its internal ethics advisory committee that it is particularly problematic if an agency employee participates in the organization's decisions on matters that impact both the State agency and the organization members.

REASONING: The Commission reviewed the facts of the situation and determined that a blanket prohibition regarding serving as an officer in vendor-dominated organizations would not produce a fair result. The Commission also noted that the agency's code of ethics specifically encourages employees to join professional organizations but places the burden on the employee to avoid conflict situations.

POST-EMPLOYMENT RESTRICTIONS FOR STATE EMPLOYEES NEW JERSEY CONFLICTS OF INTEREST LAW

Presented below are general explanations of the post-employment provisions of the Conflicts Law as well as summaries of past Commission cases. The case presentations are designed only to provide examples of post-employment issues that have been addressed by the Commission. Specific questions regarding a particular situation should be addressed directly to the Commission.

The sections of the Conflicts Law covering post-employment are *N.J.S.A. 52:13D-17*, the general prohibition, and 17.2(c), the casino post-employment restriction.

N.J.S.A. 52:13D-17 provides:

No State officer or employee or special State officer or employee, subsequent to the termination of his office or employment in any State agency, shall represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, or agree to represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, whether by himself or through any partnership, firm or corporation in which he has an interest or through any partner, officer or employee thereof, any person or party other than the State in connection with any cause, proceeding, application or other matter with respect to which such State officer or employee or special State officer or employee shall have made any investigation, rendered any ruling, given an opinion, or been otherwise

substantially and directly involved at any time during the course of his office or employment. Any person who willfully violates the provisions of this section is a disorderly person, and shall be subject to a fine not to exceed \$500.00 or imprisonment not to exceed six months, or both.

N.J.S.A. 52:13D-13(g) defines "interest" as:

"Interest" means (1) the ownership or control of more than 10% of the profits or assets of a firm, association, or partnership, or more than 10% of the stock in a corporation for profit other than a professional service corporation organized under the "Professional Service Corporation Act," P.L. 1969, c.232 (C. 14A:17-1 et seq.); or (2) the ownership or control of more than 1% of the profits of a firm, association, or partnership, or more than 1% of the stock in any corporation, which is the holder of, or an applicant for, a casino license or in any holding or intermediary company with respect thereto, as defined by the "Casino Control Act," P.L. 1977, c.110 (C. 5:12-1 et seq.). The provisions of this act governing the conduct of individuals are applicable to shareholders, associates or professional employees of a professional service corporation regardless of the extent or amount of their shareholder interest in such a corporation.

APPLICATION OF SECTION 17 - GENERAL POST-EMPLOYMENT PROHIBITION

Specific Cause, Proceeding, Application or Other Matter

Section 17 prohibits a former State officer or employee or special State officer or employee from representing, appearing

for, negotiating on behalf of, providing information or services not generally available to the public or agreeing to perform any of those activities for any party, other than the State, in connection with those causes, proceedings, applications or other matters in which the officer or employee had made any investigation, rendered any ruling, given any opinion or been otherwise substantially and directly involved while in State employment. There is no time limit on this prohibition.

It is important to note that these restrictions apply to specific causes, proceedings, applications or other matters in which a former State officer or employee or special State officer or employee was "substantially and directly involved" while in State employment. This restriction does not extend to "determinations of general applicability or the preparation or review of legislation which is no longer pending before the Legislature or the Governor." Whether a cause, proceeding, application or other matter at issue in a post-employment question is categorized as specific or general is a determination made by the Executive Commission on a case-by-case basis. Questions about the nature of matters with which employees had involvement during the course of their official duties should be directed to the Executive Commission.

In certain situations it may be difficult to determine whether a former State officer or employee or special State officer or employee was "substantially and directly involved" in a certain matter or whether such officer or employee had merely been technically or formally involved. Such determinations are made as individual cases arise.

Providing Information Not Generally Available to the Public

Section 17 prohibits former State officers and employees or special State officers or employees from providing information not generally available to the public. The Commission normally solicits input from the former officer's or employee's agency in determining whether the information in question is generally made available to the public.

Application of Restriction to Partnership, Firm or Corporation

The restrictions contained in the Conflicts of Interest Law apply to the partnership, firm or corporation under the following circumstances: (1) if the former State officer or employee or special State officer or employee is a shareholder, associate or professional employee of a firm organized as a professional service corporation or (2) if the former State officer or employee or special State officer or employee owns or controls more than 10% of the stock of a corporation or more than 10% of the profits or assets of a firm, association or partnership.

The post-employment restrictions extend, therefore, to former State officers or employees and special State officers or employees personally and to any employees or officers of any professional service corporation with which he/she is employed or associated or is a shareholder. In addition, the restriction also extends to those employees or officers of partnerships, firms or corporations in which the former State officer or employee or special State officer or employee has more than 10% ownership or control. If a

former State officer or employee or special State officer or employee is employed by a company in which he/she does not have more than a 10% interest, and the company is not a professional service corporation, the restrictions contained in the Conflicts Law pertain to him/her personally but do not extend to the corporation by which he/she is employed.

SAMPLE GENERAL POST-EMPLOYMENT CASES ADDRESSED BY THE COMMISSION

Employment With a Firm With Which State Officer or Employee Has Contact in His/Her Official Capacity

The Commission has addressed the issue of employment with a firm with which a State officer or employee or special State officer or employee has contact in his/her official capacity on numerous occasions. Listed below are some examples.

1. The State employee, a Highway Supervisor, Division of Design at the Department of Transportation ("DOT"), requested permission to accept a position with a firm with which he came in contact in his official capacity. The Division of Design was responsible for all phases of projects involving bridges, drafted the actual contract agreement, supervised its administration, and acted as liaison between the consultant and the Department. The actual choice of the consulting firm was the responsibility of the Contract Selection Committee which was separate and apart from the Division of Design. The employee was not a member of the Contract Selection Committee.

The Commission determined that it would not be a conflict of interest for the employee to accept a consultant position with a firm with which he came in contact during his State service. He was, however, permanently restricted from representing, appearing for or negotiating on behalf of the firm on any matter in which he had been substantially and directly involved during his State employment. The Commission requested that as a member of the consulting firm, he refrain from working on any bridge projects that were before the DOT while he was a State employee. The employee was advised that there were no restrictions on his participation on behalf of the consulting firm before the DOT on new matters. *In the Matter of Gary Case*, Commission Case No. 763-79.

2. The State employee was offered a position as vice-president of Facilities Maintenance for a construction management and development company. As a State employee, the individual had been an engineer in the Bureau of Lease Construction, Department of the Treasury, and had been involved in monitoring construction at 2 of the 14 properties owned by the company and leased to the State.

The Commission discussed whether there was an improper "revolving door" appearance to the employee being offered the position. Upon learning that the development company had solicited the employee for the vice-president position and that the employee had not sought the position, the Commission considered the appearance issue to be resolved. The Commission then determined that section 17 did not bar the employment with the development company but that the

employee could not represent the company with respect to the two properties with which he had involvement as a State employee. *In the Matter of Lewis Ischinger*, Commission Case No. 5-90.

3. A Department of Energy employee received an offer of employment from a subcontractor with whom she had interaction in her official capacity. The interaction included accompanying the subcontractor on "walk throughs" of institutions applying for grants from the Department and auditing and monitoring the status of grant applications.

The Commission reviewed the matter under the section 17 post-employment restriction and also considered whether the employee had exercised an unwarranted privilege prohibited by section 23(e)(3) of the statute. The Commission determined that although the employee had some involvement and contact with the subcontractor in her official capacity, there did not appear to have been any substantial and direct involvement in a specific matter by the employee during the course of her employment. As to the unwarranted privilege provision, the Commission determined that since the employee did not solicit the position with the subcontractor but rather was approached by the subcontractor and immediately contacted her supervisor regarding the offer of employment, no unwarranted privilege existed. *In the Matter of Frances Kelly*, Commission Case No. 875-80.

Matters Pending Before Former Employee's Former Agency

Former State officers and employees or special State officers or employees are not prohibited from working on matters that

originated in their former State departments or agencies subsequent to their leaving State service so long as they had no substantial and direct involvement in those matters.

In 1974, the former Acting Director of the Division of Water Resources in the Department of Environmental Protection requested an opinion from the Commission as to whether he could accept employment with a consulting firm which had several matters before the Division of Water Resources. These matters included a stream encroachment permit, two water pollution control permits, a loan offer and grant offer.

The Commission determined that since the Acting Director's signature appeared as approving the two water pollution control permits, the loan offer and the grant offer, he was precluded from becoming involved in those matters during his employment with the firm. Because he was not involved with the stream encroachment permit, the Commission found that it did not fall with the section 17 prohibition. *Advisory Opinion No. 23.*

Employment by Entities Receiving Funding from Former Agency

In 1972, the former Chief of the Bureau of Financial Aid at the Department of Community Affairs ("DCA") requested permission to accept employment in and for a municipality whose program he was responsible for coordinating during his tenure at the Department. The employee made the contract arrangements with the city for funding from DCA; however, he did not sign off on the pending contracts.

The Commission determined that the former employee made the contract arrangement for funding by the DCA and that such activity on the part of the employee constituted direct involvement within the meaning of section 17. All monies for administering the municipality's program came from the DCA. *Advisory Opinion No. 2.*

In 1980, the Commission issued two advisory opinions dealing with employment by entities receiving funding from a former agency and distinguished the cases based on the "substantial and direct" involvement criteria articulated in the statute.

In the first instance, the Commission addressed a situation which involved an individual who worked for the State Law Enforcement Planning Agency ("SLEPA") as a Senior Planner. During the course of his employment, he had official associations with a County Director of a Planning Board who was anxious to participate in a SLEPA Planning Program. The Senior Planner advised the Director to send a letter to SLEPA stating the county's interest in the program, which the Director did. Several months subsequent to receiving information from SLEPA, the Director submitted an application seeking SLEPA funding for his County Planning Program. The Senior Planner then assisted the Director in completing the application by providing data relative to the program and, in particular, to the county's personnel and financial needs. The Senior Planner then became interested in the position which was to be supported by the SLEPA grant.

The Commission determined that since the individual was substantially and directly

involved in the awarding of the SLEPA grant, he was precluded from such employment due to the post-employment restriction. *Advisory Opinion No. 37.*

The Executive Commission considered two related requests for advice involving former SLEPA employees who had accepted or desired to accept positions of employment with county agencies receiving SLEPA grants. The individuals, in their capacities as State employees, had no involvement in processing or otherwise acting upon the grant applications of the county agencies that later became their employers.

The Commission determined that the employment was not proscribed as the former State employees were not substantially and directly involved in these matters during the course of their State employment. The Commission determined that, in and of itself, a grantor-grantee relationship between an individual's former State agency and his subsequent non-State employer normally does not give rise to a prohibited post-employment situation within the framework of section 17. The Commission noted that, of course, the applicability of the post-employment restriction of the Conflicts of Interest Law to any given sets of facts and circumstances ultimately can be determined only by direct inquiry to the Executive Commission on Ethical Standards. *Advisory Opinion No. 39.*

Seeking Future Employment

In the past, the Executive Commission has determined that employees who have direct and substantial contact with any consultants or vendors doing business with the State must refrain from circulating

resumes or in any manner seeking employment with those firms while still in State service. If an employee is solicited for potential employment by a firm with which he/she has direct and substantial contact, that solicitation must be disclosed immediately to the employee's management and to the departmental ethics liaison officer to avoid a situation where an employee may appear to be using his/her official position to gain an unwarranted advantage. Employees who do not have direct and substantial contact with consultants or vendors doing business with the State may circulate resumes and enter into discussions regarding potential employment with those firms as long as they also avoid a situation that may give rise to an unwarranted advantage. All employees are cautioned that discussions, interviews, and negotiations should not take place on State time. *In the Matter of Theodore Fischer*, Commission Case No. 83-88.

In summary, the general post-employment restrictions do not prohibit a former State officer or employee or special State officer or employee or any firm in which he/she has an interest from representing a party other than the State concerning:

- Determinations of general applicability.
- Preparation or review of legislation which is no longer pending before the Legislature or the Governor.
- Regulations no longer pending before an agency since these are not specific causes and are analogous to legislation.
- Before any State agency, including the individual's former agency, if the former officer or employee or special State

officer or employee was not "substantially and directly" involved in the matter while employed by the State.

-Accepting employment with entities receiving funding from the individual's former agency or any other State agency if the State officer or employee or special State officer or employee was not "substantially and directly" involved in the matter in question.

-Providing information generally available to the public.

-Accepting employment with a firm with which the State officer or employee or special State officer or employee had contact in his/her official capacity.

SECTION 17.2(c) - CASINO POST-EMPLOYMENT RESTRICTION

N.J.S.A. 52:13D-17.2(c) provides:

No person or any member of his immediate family, nor any partnership, firm or corporation with which such person is associated or in which he has an interest, nor any partner, officer, director or employee while he is associated with such partnership, firm or corporation, shall, within two years next subsequent to the termination of the office or employment of such person, hold, directly or indirectly, an interest in, or hold employment with, or represent, appear for or negotiate on behalf of, any holder of, or applicant for, a casino license in connection with any cause, application or matter, or any holding or intermediary company with respect to such holder of, or applicant for, a casino license in connection with any phase of casino development, permitting, licensure or any other matter whatsoever related to casino

activity, except that a member of the immediate family of a person may hold employment with the holder of, or applicant for, a casino license if, in the judgment of the Executive Commission on Ethical Standards, the Joint Legislative Committee on Ethical Standards, or the Supreme Court, as appropriate, such employment will not interfere with the responsibilities of the person and will not create a conflict of interest or reasonable risk of the public perception of a conflict of interest, on the part of the person. Nothing herein contained shall alter or amend the post-employment restrictions applicable to members and employees of the Casino Control Commission and employees and agents of the Division of Gaming Enforcement pursuant to subsection b.(2) of section 59 and to section 60 of P.L. 1977, c.100 (C.5:12-59b.(2) and C.5:12-60).

Section 17.2(c), the "Casino Ethics Amendment," prohibits a "person" from holding, directly or indirectly, an interest in, or holding employment with, or representing, appearing for, or negotiating on behalf of, any holder of, or applicant for, a casino license in connection with any cause, application or matter, or any holding or intermediary company with respect to such holder of, or applicant for, a casino license in connection with any phase of casino development, permitting, licensure or any other matter whatsoever related to casino activity. This prohibition extends for a period of two years. Section 17.2(c) was amended on December 20, 1993 to provide an exception for members of a "person's" immediate family. Under the amendment, a family member is permitted to hold employment with the holder of, or applicant for, a casino license, if the Executive Commission

determines that such employment will not create a conflict of interest or reasonable risk of the public perception of a conflict of interest.

Section 17.2(a) defines "person" as:

... any State officer or employee subject to financial disclosure by law or executive order and any other State officer or employee with responsibility for matters affecting casino activity; any special State officer or employee with responsibility for matters affecting casino activity; the Governor; any member of the Legislature or full-time member of the Judiciary; any full-time professional employee of the Office of the Governor, or the Legislature; members of the Casino Reinvestment Development Authority; the head of a principal department; the assistant or deputy heads of a principal department, including all assistant and deputy commissioners; the head of any division of a principal department; any member of the governing body, or the municipal judge or the municipal attorney of a municipality wherein a casino is located; any member of or attorney for the planning board or zoning board of adjustment of a municipality wherein a casino is located, or any professional planner, or consultant regularly employed or retained by such planning board or zoning board of adjustment.

Section 13(i) defines "member of the immediate family" as:

... the person's spouse, child, parent or sibling residing in the same household.

Application of Restriction to Partnership, Firm or Corporation

The restrictions contained in section 17.2(c) apply to "persons" and immediate family members not granted a waiver and to any partnership, firm or corporation with which such "person" or family member is associated or in which he/she has an interest. The Conflicts Law defines "interest" as the ownership or control of more than 10% of the stock of a corporation or more than 10% of the profits or assets of a firm.

Effect or Restriction on Employment by Casino Association

In Advisory Opinion No. 41, the Executive Commission determined that, under the application of section 17.2(c), a "person" may not become employed by the Casino Association of New Jersey ("Casino Association") immediately upon leaving State service.

The Casino Association is a non-profit corporation and holder of a non-gaming casino service industry license which operates as a trade association representing the collective interests of Atlantic City casino licensees. Among other things the Association works to promote the common good of the industry and its members and to provide liaison between the industry and other parties, be they governmental, business, labor, social or civic.

In Advisory Opinion No. 41, the Executive Commission noted that section 17.2 is a part of the Conflicts Law which has as its paramount objective to "ensure propriety and preserve public confidence." N.J.S.A. 52:13D-12(b). Section 17.2 supplements both the Casino Control Act and the Conflicts Law in fostering and maintaining this objective. It represents an additional

step "to sanitize casino gambling and its potentially corrupting effect upon government." See Knight v. Margate, 88 N.J. 374, 392 (1981). It is the Commission's view that a technical interpretation of section 17.2(c) which would allow "persons" leaving State service to be employed by the Casino Association would be inconsistent with the overall objectives and purposes of the statute even though the Casino Association is not a casino license holder. Its membership is exclusively casino license holders and it acts to further the aggregate interests of those casino license holders in a number of areas, including interaction with State government. This is exactly the kind of relationship between State "persons" and the casinos which is intended to be regulated by the section 17.2(c) post-employment ban. *Advisory Opinion No. 41*.

SAMPLE CASINO POST-EMPLOYMENT CASES ADDRESSED BY THE COMMISSION

In 1982, the Executive Commission interpreted the "associated" language of section 17.2(c) to mean that, regardless of the business structure of the firm, any partnership, ownership or employment by a "person" or immediate family member with a firm that represents, in any capacity in any matter, a casino license holder brings that firm under the two-year restriction of the statute. *In the Matter of a Former Casino Control Commission Accountant*, Commission Case No. C15-80. Although the nature of the "associated" relationship is not defined by the statute, the Commission adopted the position that it includes partnership, ownership and employment relationships because of the internal sense of the

provision which "refers to partners, officers, directors, and employees as those deemed associated with partnerships, firms or corporations within the meaning of its terms." *Id.*

In 1986, the Commission, building on its 1982 interpretation, determined that "persons" and law firms with which they were associated were prohibited from representing casino licensees or applicants in any circumstances whatsoever. *In the Matter of Irwin Kimmelman*, Commission Case No. C2-86. With regard to representing a holding or intermediary company with respect to a licensee or applicant, the representational prohibition is not so broad, applying only to any matters related to casino activity. *Id.*

In 1989, the Executive Commission rendered a formal advisory opinion concerning whether an "of counsel" relationship associates a former State employee with a law firm for the purposes of the application of section 17.2(c). The Commission determined that the facts and circumstances of the proposed "of counsel" relationship would constitute an "association" and would subject the law firm to the provisions of section 17.2(c). *Advisory Opinion No. 40.*

In 1991, the Executive Commission restated its interpretation of section 17.2(c) in connection with an analysis of the post-employment section of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The Commission noted that:

Section 17.2(c) restricts not only the representation by a firm in which a ["person"] has an interest but also prohibits representation by a firm with which the ... "person" ... is "associated." *In the Matter*

of Division of Gaming Enforcement Request for Advice, Commission Case No. 18-91.

In 1992, a former Casino Control Commission employee requested an opinion from the Commission regarding the application of the casino post-employment restriction to her situation. The former employee established a private practice and was interested in providing legal services to law firms on an independent contractor basis. Because the possibility existed that she would offer her services to an Atlantic City law firm representing casino licensees, she inquired as to the effect of section 17.2(c) on the arrangements that she would make.

The Executive Commission determined that section 17.2(c) of the Conflicts Law did not preclude the former State employee from establishing the proposed independent contractor relationship with a law firm that represents holders of casino licenses. This ruling was limited to the circumstances of this case. The crucial question in this case was whether the services that the former employee proposed to provide for a law firm created an "association" with that law firm; such an association would subject a law firm as well as the former employee to the section 17.2(c) restriction. *In the Matter of Susan Kessler*, Commission Case No. 5-92.

Members of the Bar

Former State officers and employees who are also members of the bar must also adhere to the ethical standards adopted by the New Jersey Supreme Court:

Except as law shall otherwise expressly permit, a lawyer shall not represent a

private client in connection with a matter (1) in which the lawyer participated personally and substantially as a public officer or employee, (2) about which the lawyer acquired knowledge of confidential information as a public officer or employee, or (3) for which the lawyer had substantial responsibility as a public officer or employee. (RPC 1.11 (a)).

The scope of New Jersey's Conflicts of Interest Law is at least as broad as the rules covering attorney ethics. Requests for advice on the application of the Rules of Professional Conduct should be directed to the Supreme Court Advisory Committee on Professional Ethics.

Regarding "Guidelines"

Please direct any comments or questions about "Guidelines" to Jeanne A. Mayer, Esq., Deputy Director, Executive Commission on Ethical Standards, CN 082, Trenton, NJ 08625, (609)292-1892.